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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CHIQUITA FRESH, N.A., L.L.C., et al.

Plaintiffs

v.

SAMMY'S PRODUCE, INC., et al

Defendants

Civil Action No: 3:08-cv-00714

**STIPULATION AND ORDER**

Plaintiffs, Chiquita Fresh N.A., LLC and Andrew & Williamson Sales Co., Inc.  
("Plaintiffs"), by and through their attorneys, and Defendants, Sammy's Produce, Inc., Yan Skwara,  
Samuel V. Nucci and Darin Pines, by and through their attorneys, consent, agree and stipulate to the  
following:

1. Plaintiffs are trust creditors under the provisions of the Perishable Agricultural  
Commodities Act ("PACA"), 7 U.S.C. §499e(c), against Defendant Sammy's Produce, Inc for a  
debt in the aggregate principal amount of \$125,878.32.

1           2.     The parties stipulate and agree that the funds on deposit in the bank account of  
2 Sammy's Produce at Washington Mutual Bank in the amount of \$73,545.90 currently frozen by the  
3 Temporary Restraining Order entered in this matter on April 22, 2008 are trust assets belonging to  
4 Plaintiffs.

5           3.     Defendants shall pay to Plaintiffs the sum of \$73,545.90 on or before May 7, 2008.  
6 All payments shall be made by certified check, cashiers check, or money order, payable to  
7 McCarron & Diess Trust Account, and delivered to McCarron & Diess, 4900 Massachusetts Ave.,  
8 NW, Suite 310, Washington, DC 20016 on or before the date payment is due. Payments may also  
9 be made by wire transfer to counsel for Plaintiffs' Client Trust Account on or by the date payment is  
10 due.  
11

12           4.     The parties stipulate and agree and it is hereby ordered, that Washington Mutual  
13 Bank shall immediately pay over the amount of \$73,545.90 from the funds on deposit in the bank  
14 accounts of Sammy's Produce, Inc. to McCarron & Diess, 4900 Massachusetts Ave, NW, Suite  
15 310, Washington, DC 20016, and that the TRO entered herein is dissolved so that payment of the  
16 \$73,545.90 from the frozen bank account(s) can be effectuated.  
17

18           5.     Nothing herein shall prejudice to Plaintiffs' standing as PACA trust creditors as set  
19 forth in paragraph 1 above. The original credit terms between the Parties are not intended to be  
20 modified, nor are they modified by this Stipulation and Order. Nothing herein, nor the installment  
21 nature of the payments being made hereunder, shall be deemed, interpreted or otherwise construed  
22 as an extension of credit by Plaintiffs to Defendants, nor as a waiver of Plaintiffs' rights under the  
23 PACA statutory trust as set forth in 7 U.S.C. § 499e(c), and Plaintiffs' rights under this Stipulation  
24 and Order are in addition to their rights under said trust.  
25  
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1           6.     The hearing on Plaintiffs' Amended Motion for Preliminary Injunction shall proceed  
2 on May 9, 2008 as previously scheduled.

3           7.     This Stipulation and Order may be executed by the Parties or by the Parties'  
4 authorized counsel acting with active authority from their principal in Counterparts, and collectively  
5 all signed Counterparts represent one Agreement.

6           8.     The Parties acknowledge having had the opportunity to discuss this Stipulation and  
7 Order with their respective attorneys, and that they have availed themselves of that opportunity to  
8 the extent they have desired to do so.  
9

10  
11  
12 IT IS SO AGREED AND APPROVED AS TO FORM AND CONTENT:

13 Dated this 5th day of May, 2008.

14 KIRBY & MCGUINN, A P.C.

15  
16 By: 

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21 *Attorneys for Plaintiffs*

22 BRYAN W. PEASE

23 By: 

24 Bryan W. Pease, Esq.  
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*Attorney for Defendants*

McCARRON & DIESS

By: 

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ON BEHALF  
OF LOUIS W. DIESS III

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15 Attorneys for Plaintiff

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CHIQUITA FRESH, N.A., L.L.C.

Plaintiff

v.

SAMMY'S PRODUCE, INC., et al

Defendants

Civil Action No: 08-CV714 JLS(POR)

**PROOF OF SERVICE**

I, Tina Floros, declare under penalty of perjury that the following facts are true and correct:

I am a resident of the State of California and over the age of 18 years and not a party to or interested in the within entitled cause. I am an employee of KIRBY & McGUINN, A P.C., and my business address is 600 B Street, Suite 1950, San Diego, California 92101. On May 6, 2008, I served the following document(s):

**1) STIPULATION AND ORDER by**

- **MAIL:** by placing a true copy(ies) thereof in a sealed envelope(s) in the outgoing mail tray located in my office for deposit in the United

1 States mail, with postage fully prepaid, addressed as shown below.  
2 I am readily familiar with the business practice at my place of  
3 business for collection and processing of outgoing mail with the  
4 U.S. Postal Service that same day in the ordinary course of  
5 business.

6 ☐ **PERSONAL SERVICE:** by personally serving by hand-delivery, via the  
7 same in an envelope(s) addressed as shown below:

8 ☐ **OVERNIGHT DELIVERY:** by enclosing, a true copy(ies) in a sealed  
9 Federal Express/Overnite Express envelope(s) addressed as  
10 shown below.

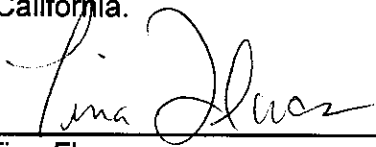
11 ☐ **VIA FACSIMILE:** by transmitting via telefax to the number(s) shown  
12 below:

13 Attorneys for Defendants

14 Bryan W. Pease, Esq.  
15 302 Washington Street, #404  
16 San Diego, CA 92103

17 I declare under penalty of perjury under the laws of the United States that the  
18 above is true and correct.

19 Executed on May 6, 2008, at San Diego, California.

20   
21 Tina Floros